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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,981	07/03/2003	Louis Brown Abrams	4811-14	4355

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EXAMINER
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JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 07/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/613,981	ABRAMS, LOUIS BROWN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Cheryl Juska	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18,23-28 and 35-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18,23-28 and 35-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
       Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
       Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment filed April 18, 2006, has been entered. The specification and claims 2 and 35 have been amended as requested. Claims 19-22 and 29-34 have been cancelled and new claims 36-44 have been added. Thus, the pending claims are 1-18, 23-28, and 35-44.
2. Said amendment to the specification is sufficient to overcome the objection to the drawings set forth in section 4 of the last Office Action.
3. The cancellation of claims 29 and 30 renders moot the 112, 1<sup>st</sup> rejection of said claims as set forth in section 6 of the last Office Action.
4. The allowable subject matter indicated in sections 7 and 8 of the last Office Action is hereby withdrawn in view of the following new art rejections. In particular, claims 23 and 35 were misread to include the limitation that the second adhesive layer was discontinuous as rejected in claim 1. However, this is not the case. Therefore, a new art rejection is set forth below. Regarding claim 1, a new rejection is also set forth based upon new arguments of obviousness.

### ***Drawings***

5. The drawings were received on April 18, 2006. These drawings are accepted. As such, the objection to the drawings as set forth in section 3 of the last Office Action is hereby withdrawn.

### ***Priority***

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6. It is noted that the first line of the specification has not been amended to reflect the proper priority documents as set forth in section 2 of the last Office Action.

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 35-44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. Claim 35 is indefinite because it is unclear how one can contact “flock with a first permanent adhesive layer” and then contact “the first permanent adhesive layer with an elastic layer” wherein the flock and elastic layer are “located on a *common side* of the first permanent adhesive layer.” It is unclear how both the flock and the elastic layer can be on the same side of the adhesive layer. Due to its indefiniteness, said claim and claims 36-44, which depend therefrom, are not further examined on the merits.

10. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

11. Claims 35-44 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed

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invention. Claims 35-44 are rejected as containing new matter in that the specification as originally filed does not provide adequate support for an embodiment wherein the flock and the elastic layer are located on a “common side” of the first permanent adhesive layer.

***Claim Rejections - 35 USC § 102/103***

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 23-26 and 28 are rejected under 35 USC 102(a) as being unpatentable over JP 2001-270019 assigned to Shingii.

Shingii discloses flocked fibers adhered either one or both sides of a stretchable, flexible, and elastic sheet (abstract). Said elastic sheet is preferably a waterproof, foamable chloroprene rubber (abstract). The flock is adhered via an adhesive layer (abstract and Figure 1). Hence, in the embodiment wherein flock is applied to both sides of the elastic sheet, a second adhesive is applied (translation, section [0019] and Figure 5). Note applicant’s claims do not exclude another material being bonded to said second adhesive.

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Therefore, Shingii teaches the limitations of claims 23-26 and 28 with the exception of the claimed properties of modulus, elongation, and recovery of the elastic sheet. However, it is reasonable to presume that said properties are inherent to the Shingii invention. Support for said presumption is found in the use of similar materials (i.e., elastic base sheet) used to produce the the flocked substrate. The burden is upon applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 495. In the alternative, the claimed properties would obviously have been provided by the process disclosed by Shingii. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102. Thus, claims 23-26 and 28 are rejected as being anticipated by or obvious over the cited Shingii reference.

***Claim Rejections - 35 USC § 103***

15. Claims 1, 3-18 and 27 are rejected under 35 USC 103(a) as being unpatentable over the cited Shingii reference alone or in view of US 3,961,116 issued to Klein.

While Shingii teaches continuous adhesive layers for application of the flocked fibers, it is well known in the art of flocking to employ discontinuous adhesive layers. Specifically, it is known to apply a discontinuous adhesive layer in order to improve the flexibility of a flocked substrate as compared to a continuous adhesive layer. Applicant is hereby given Official Notice of this fact. Additionally, it is well known to apply said adhesive discontinuously in order to provide air and moisture permeability (Klein, col. 2, lines 24-27). Thus, it would have been readily obvious to one of ordinary skill in the art to apply the adhesive layer or layers of Shingii

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in a discontinuous manner in order to provide breathability and/or flexibility to the substrate.

Therefore, claims 1, 6, 8, 10-12, 14, and 27 are rejected.

Regarding claims 3-5, it is argued that the cited elastic properties are present in the prior art or would be readily obvious over the cited art since Shingii teaches an elastic base sheet that meets the chemical and structural limitations of the claims. Like materials cannot have mutually exclusive properties. Hence, claims 3-5 are also rejected.

With respect to claim 7, while the prior art fails to teach the elastic sheet is a thermoplastic polyurethane, it would have been readily obvious to one of ordinary skill in the art to select said polyurethane. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. Hence, claim 7 is also rejected.

Regarding claims 9, 13, and 15, the prior art fails to teach the claimed thicknesses. However, said thicknesses are held to be obvious over the prior art. Specifically, it would have been obvious to one skilled in the art to employ the thicknesses in the amounts recited by applicant, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Therefore, claims 9, 13, and 15 are also rejected.

With respect to claims 16-18, said claims are rejected along with claim 1 in that the limitations that the second adhesive layer is a “web” adhesive or made of sets of filaments are not seen to further distinguish the present invention from the prior art. Specifically, the web of filaments is descriptive of the form of the adhesive before activation. In other words, said web is an intermediate product and not necessarily present in the final product as claimed. Therefore,

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claims 16-18 are also rejected.

16. Claim 2 is rejected under 35 USC 103(a) as being unpatentable over the cited Shingii reference alone or in view of Klein as applied to claim 1 above and in further view of US 5,597,637 issued to Abrams.

Shingii and Klein fail to teach application of the flock via a flock transfer. However, said flock transfers are well known in the art. For example, Abrams teaches an elastomeric flock transfer for applying flock to a stretchable substrate (abstract). thus, it would have been readily obvious to one of ordinary skill in the art apply the flock to the elastic base sheet via a flock transfer in order to provide a decorative flock pattern or in order to provide the pre-formed flock transfer. Therefore, claim 2 is rejected.

### ***Conclusion***

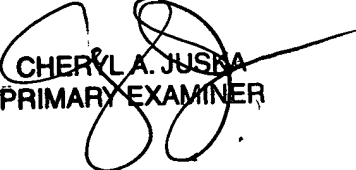
17. The art made of record and not relied upon is considered pertinent to applicant's disclosure.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

19. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
CHERYL A. JUSSA  
PRIMARY EXAMINER

cj  
July 10, 2006